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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

MAUREEN TOFFOLONI, as Administrarix and Personal Representative of the ESTATE OF NANCY E. BENOIT, Plaintiff, v. LFP PUBLISHING GROUP, LLC, d/b/a Hustler Magazine, MARK SAMANSKY, an Individual, and other distributors and sellers of, Hustler Magazine, as Defendants X, Y, and Z, Defendants.	)	CIVIL ACTION FILE NO. 1:08-CV-0421-TWT

PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT AS TO LIABILITY

COMES NOW, Plaintiff, Maureen Toffoloni, as Administratrix and Personal Representative of the Estate of Nancy E. Benoit, through counsel and moves this Court for an order pursuant to Fed. R. Civ. P. Rule 56(d)(2) for partial summary judgment against the Defendant, LFP Publishing Group, LLC, d/b/a Hustler Magazine, as follows:

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(1)

Plaintiff is the duly appointed and serving personal representative of the Estate of Nancy E. Benoit, deceased, of Fayette County, Georgia.

(2)

Defendant is the publisher of "Hustler Magazine."

(3)

Hustler published nude and partial nude images (the "images") of Nancy E. Benoit in its so-called "March 2008" edition. *See* Exhibits A, B, C, and D, respectively to Plaintiff's Verified Complaint; *see also* Answer of Defendant LFP Publishing Group, LLC (the "Answer"), ¶¶ 8, 21, and 33.

(4)

Hustler did not seek or obtain the permission of Nancy E. Benoit, or anyone authorized to act on behalf of Nancy E. Benoit, or the Estate of Nancy E. Benoit, to use, publish, or make any other commercial use of the images. *See* Exhibits C and D to Plaintiff's Complaint.

(5)

Hustler did not compensate Nancy E. Benoit, or the Estate of Nancy E. Benoit, for its use of the images for commercial purposes. See Exhibits C and D to Plaintiff's Complaint.

(6)

In the case of *Toffoloni v. LFP Publishing Group, LLC*, 572 F.3d 1201 (11th Cir. 2009), the United States Court of Appeals for the Eleventh Circuit has held that Hustler's use and publication, for commercial purposes, of the images of Nancy E. Benoit in its "March 2008" edition "[does] not qualify for the news worthiness exception to the right of publicity" held by Nancy E. Benoit during her life and by her Estate after her death. *See* *Toffoloni*, *supra* at 1213.

(7)

Thus, there is no genuine issue with respect to the fact that Hustler used and published the images of Nancy E. Benoit for commercial purposes in its "March 2008" edition of *Hustler* Magazine. Defendant has admitted same.

(8)

There is no genuine issue with respect to the fact that Defendant's use and publication of the images of Nancy E. Benoit for commercial purposes were without the permission of Nancy E. Benoit, or someone authorized to act on her behalf, and without the permission of Plaintiff, as the personal representative of the Estate of Nancy E. Benoit.

(9)

There is no genuine issue with respect to the fact that Defendant did not compensate Nancy E. Benoit or the Estate of Nancy E. Benoit for its use and publication, for commercial purposes, of the said images of Nancy E. Benoit. Defendant has admitted same.

(10)

Based upon the Verified Complaint, facts admitted by the Defendant, and the opinion and judgment of the Eleventh Circuit Court of Appeals in *Toffoloni v. LFP Publishing Group, LLC*, *supra*, Plaintiff moves for an Order declaring that Defendant LFP Publishing Group, LLC is liable to Plaintiff for Defendant's violation of Plaintiff's right of publicity, with Plaintiff's damages to be decided by a jury.

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WHEREFORE, Plaintiff prays that her Motion will be inquired into and sustained.

Respectfully submitted October 16, 2009.

/s/ Richard P. Decker
RICHARD P. DECKER
State Bar of Georgia #215600
F. EDWIN HALLMAN, JR.
State Bar of Georgia #319800
RICHARD A. WINGATE
State Bar of Georgia #770617
ZACHARY M. WILSON III
State Bar of Georgia #559581

For HALLMAN & WINGATE, LLC
Attorneys for Plaintiff

166 Anderson Street, S.E.
Suite 210
Marietta, Georgia 30060
(404) 588-2530